

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BRIAN DAVID HILL,)
Petitioner,)
v.) 1:17CV1036
UNITED STATES OF AMERICA,) 1:13CR435-1
Respondent.)

O R D E R

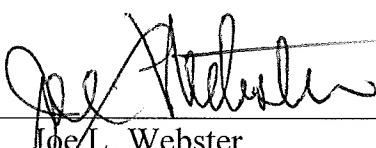
Petitioner in this action submitted a Motion (Docket Entry 125) to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. In accordance with Rule 4(b) of the Rules Governing Section 2255 Proceedings, the Court will direct the United States Attorney to file a Response to the Motion.

Petitioner also filed two other documents which need to be addressed at this point. First, he submitted an Application (Docket Entry 126) to proceed *in forma pauperis*. There is no filing fee associated with a § 2255 Motion. Therefore, the Application will be denied as unnecessary. Petitioner also filed a Notice (Docket Entry 127) in which he seeks to have several of the Exhibits supporting his § 2255 Motion sealed or filed in color. The Court filed all of the Exhibits in color, thereby mooting that part of the request. Petitioner also asks to have Exhibit 49 sealed. That Exhibit consists of subpoenas for witnesses that Petitioner apparently intends to call at an eventual hearing in the case. Petitioner does not

appear to have fully complied with the Court's procedures for sealing documents. Nevertheless, the problem can be dealt with on a more practical basis. Subpeonas for potential future witnesses are not proper exhibits supporting a § 2255 Motion generally, and none are proper at this point because no hearing has yet been ordered. In fact, the Government has not responded, which means that the § 2255 Motion has not been fully briefed and it is not yet clear whether any hearing is necessary. Given that, there is no need for any subpoenas and the Court will strike them from the record. This will moot the request to seal. Should a hearing eventually be necessary, Petitioner or his counsel can subpoena any necessary witnesses at that time.

IT IS THEREFORE ORDERED that Petitioner's Application (Docket Entry 126) to proceed *in forma pauperis* is denied, that Exhibit 49 as contained in Docket Entry 134 is stricken and will be removed from the record, and that the United States Attorney is directed to file a Response to Petitioner's § 2255 Motion (Docket Entry 125) within sixty (60) days from the date of the entry of this Order.

This, the 16th day of November, 2017.



Joe L. Webster
United States Magistrate Judge